

The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte PHILLIP J. GILMORE et al.

Appeal No. 2004-1088
Application No. 09/805,202

ON BRIEF

Before ABRAMS, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 5,
10, 12 and 56 to 82. Claims 6 to 9 and 11 have been objected to as depending from a
non-allowed claim. Claims 13 to 55 have been canceled.

We REVERSE.

BACKGROUND

The appellants' invention relates generally to conveyors and, more particularly, to extendable conveyors for loading products into, or unloading products from a truck trailer, or the like (specification, p. 1). A copy of the dependent claims under appeal is set forth in the appendix to the appellants' brief. Claim 1, the only independent claim on appeal, reads as follows:

An extendable conveyor for conveying articles between a particular location and a selectable variable location, comprising:
a support structure;
a mechanically extendable section which is extendable along a longitudinal axis between a fully retracted position and a fully extended position, said mechanically extendable section supported in a cantilever fashion by said support structure, said mechanically extendable section having a conveying surface; and,
a user interface section which is horizontally adjustable with respect to said longitudinal axis of said extendable section, wherein said user interface section is supported in a cantilever fashion by said mechanically extendable section.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Weir	3,819,068	June 25, 1974
McWilliams	3,885,682	May 27, 1975
Gilmore et al. (Gilmore)	5,351,809	Oct. 4, 1994

Claims 1 to 5, 10, 12 and 56 to 82 stand rejected under 35 U.S.C. § 103 as being unpatentable over McWilliams in view of Weir.

Claims 1 to 4, 10, 12, 56 to 59 and 61 to 82 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gilmore in view of McWilliams.

Claim 5 stands rejected under 35 U.S.C. § 103 as being unpatentable over Gilmore in view of McWilliams and Weir.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 17, mailed July 2, 2003) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 16, filed May 27, 2003) and reply brief (Paper No. 18, filed September 3, 2003) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of

claims 1 to 5, 10, 12 and 56 to 82 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

The obviousness rejection based on McWilliams and Weir

We will not sustain the rejection of claims 1 to 5, 10, 12 and 56 to 82 under 35 U.S.C. § 103 as being unpatentable over McWilliams in view of Weir.

McWilliams' invention relates to mail bag handling apparatus, and more particularly, to apparatus for transferring bagged mail between an end loading highway vehicle and a loading dock. The bag handling apparatus has only one basic conveyor frame and a loader head equipped with conveying means operating longitudinally of the basic conveyor is mounted in a cantilever fashion on the conveyor

frame forward end and arranged for close control by an operator standing adjacent to same and monitoring progress of the individual bags being handled across the conveyors. Figures 3 and 4 illustrate a telescoping conveyor 40A comprising a series of conveyor section 110, 112 and 114; a wheel assembly 46 applied to the forward end of conveyor section 110; and a loader head 58. The loader head 58 is mounted to the wheel assembly 46 in a cantilever fashion for lateral and vertical swinging or swivelling movement, with the loader head 58 being swung vertically by power operated piston and cylinder device 60, and the loader head 58 being swung horizontally by power operated piston and cylinder device 62 (see Figure 6).

In the rejection of claim 1 based on McWilliams and Weir (answer, p. 4), the examiner (1) ascertained¹ that McWilliams does not show that the extendable conveyor section is cantilevered from the base; (2) determined that Weir shows a cantilevered conveyor; and (3) concluded that it would have been obvious to one of ordinary skill in the art to modify the conveyor of McWilliams by making it cantilevered as taught by Weir.

¹ After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

The examiner has not ascertained the correct differences between claim 1 and McWilliams. Based on our analysis and review of McWilliams and claim 1, it is our opinion that the differences are (1) the mechanically extendable section being supported in a cantilever fashion by the support structure; and (2) the user interface section being supported in a cantilever fashion by the mechanically extendable section.

With regard to these differences, we reach the conclusion that there is no suggestion, teaching or motivation in the combined teachings of McWilliams and Weir for a person of ordinary skill in the art at the time the invention was made to have modified McWilliams to arrive at the subject matter of claim 1. In that regard, while Weir does show a cantilevered conveyor, it is our opinion that Weir would not have suggested modifying McWilliams by omitting the wheel assembly 46 and then mounting the loader head 58 to the forward end of conveyor section 110. In our view, the only suggestion for modifying McWilliams to meet the above-noted limitations stems from hindsight knowledge derived from the appellants' own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

For the reasons set forth above, the decision of the examiner to reject claim 1, and claims 2 to 5, 10, 12 and 56 to 82 dependent thereon, under 35 U.S.C. § 103 is reversed.

The obviousness rejection based on Gilmore and McWilliams

We will not sustain the rejection of claims 1 to 4, 10, 12, 56 to 59 and 61 to 82 under 35 U.S.C. § 103 as being unpatentable over Gilmore in view of McWilliams.

In the rejection of claim 1 based on Gilmore and McWilliams (answer, pp. 7-8), the examiner (1) set forth the pertinent teachings of Gilmore; (2) ascertained that Gilmore does not show a user interface section which is horizontally adjustable with respect to the extendable section and cantilevered from the extendable section; (3) determined that McWilliams shows a user interface section cantilevered from the extendable section which is horizontally and vertically adjustable; and (4) concluded that it would have been obvious to one of ordinary skill in the art to modify the apparatus of Gilmore by adding the adjustable user interface of McWilliams.

The examiner has not correctly set forth the teachings of McWilliams. McWilliams does not show a user interface section cantilevered from the extendable section. McWilliams' user interface section (i.e., loader head 58) is mounted in

cantilever fashion to the wheel assembly 46 not to the extendable conveyor section 110.

We reach the conclusion that there is no suggestion, teaching or motivation in the combined teachings of Gilmore and McWilliams for a person of ordinary skill in the art at the time the invention was made to have modified Gilmore to arrive at the subject matter of claim 1. In that regard, it is our opinion that the teachings of McWilliams would have suggested adding both the loader head 58 and the wheel assembly 46 to Gilmore's extendable conveyor. However, that does not arrive at the subject matter of claim 1 since Gilmore's conveyor would no longer be supported in a cantilever fashion by the support structure. In our view, the only suggestion for modifying Gilmore to arrive at the claimed invention stems from hindsight knowledge derived from the appellants' own disclosure.

For the reasons set forth above, the decision of the examiner to reject claim 1, and claims 2 to 4, 10, 12, 56 to 59 and 61 to 82 dependent thereon, under 35 U.S.C. § 103 is reversed.

The obviousness rejection based on Gilmore, McWilliams and Weir

We have reviewed the reference to Weir additionally applied in the rejection of claim 5 but find nothing therein which makes up for the deficiencies of Gilmore and McWilliams discussed above regarding claim 1. Accordingly, we cannot sustain the examiner's rejection of claim 5 under 35 U.S.C. § 103 as being unpatentable over Gilmore in view of McWilliams and Weir.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 5, 10, 12 and 56 to 82 under 35 U.S.C. § 103 is reversed.

REVERSED

NEAL E. ABRAMS
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

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